

Assembly Bill No. 29

Passed the Assembly March 26, 2009

Chief Clerk of the Assembly

Passed the Senate March 26, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1032.5, 1275, 1277.5, 1329, and 1951 of, and to add Sections 1277.1 and 1329.5 to, Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 29, Coto. Unemployment insurance.

(1) Under existing law, unemployment compensation benefits are based on wages paid in a base period that is calculated according to the month within which the benefit year begins.

This bill would, for new claims filed on or after a specified date, but no later than April 3, 2011, for which a valid claim or benefit year cannot be established under the currently defined base periods, establish alternative base periods, as provided. This bill would also require a claimant to submit specified information regarding wages to the Employment Development Department via an affidavit, under specified conditions. The bill would require the department to implement the technical changes necessary to establish claims under the alternate base period, as specified, as soon as possible, but no later than April 3, 2011.

Because this measure would increase the amount of unemployment compensation paid, it would make an additional amount payable from the Unemployment Fund, a continuously appropriated special fund, and thereby would make an appropriation.

Because this measure would require specified information to be submitted to the Employment Development Department on an affidavit, the submission of which, if false, is a misdemeanor under existing law, it would impose a state-mandated local program.

(2) The bill would require the department, until April 3, 2013, to report no less frequently than quarterly, to the Joint Legislative Budget Committee on the progress and effectiveness of implementation of the alternative base period program prescribed under the bill.

(3) Existing law requires the Employment Development Department, upon the filing of a new claim for benefits, to

promptly make a computation on the claim that sets forth the maximum amount of benefits potentially payable during the benefit year and the weekly benefit amount, and to promptly notify the claimant and the claimant's base period employers of the computation, as specified.

This bill would also require the department to promptly notify each of the claimant's base period employers of the computation on the claim based on a determination of eligibility, as specified.

(4) Existing law requires the manner in which disputed claims, appeals, and petitions are presented, the reports required thereon by the claimant and from any employing unit, and the conduct of hearings and appeals, to be in accordance with rules prescribed by the California Unemployment Insurance Appeals Board.

This bill would require the appeals board to permit a party or representative to participate in a hearing by telephone, as specified, in accordance with regulations adopted by the board.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1032.5 of the Unemployment Insurance Code is amended to read:

1032.5. (a) Any base period employer may, within 15 days after mailing of a notice of computation under subdivision (a) of Section 1329, submit to the department facts within its possession disclosing that the individual claiming benefits is rendering services

for that employer in less than full-time work, and that the individual has continuously, commencing in or prior to the beginning of the base period, rendered services for that employer in such less than full-time work.

(b) The department shall consider facts submitted under subdivision (a) of this section together with any information in its possession and promptly notify the employer of its ruling. If the department finds that an individual is, under Section 1252, unemployed in any week on the basis of his or her having less than full-time work, and that the employer submitting facts under this section is a base period employer for whom the individual has continuously, commencing in or prior to the beginning of the base period, rendered services in such less than full-time work, that employer's account shall not be charged, except as provided by Section 1026, for benefits paid the individual in any week in which such wages are payable by that employer to the individual. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of the notice of the ruling or reconsidered ruling.

SEC. 2. Section 1275 of the Unemployment Insurance Code is amended to read:

1275. (a) Unemployment compensation benefit award computations shall be based on wages paid in the base period. "Base period" means: for benefit years beginning in October, November, or December, the four calendar quarters ended in the next preceding month of June; for benefit years beginning in January, February, or March, the four calendar quarters ended in the next preceding month of September; for benefit years beginning in April, May, or June, the four calendar quarters ended in the next preceding month of December; for benefit years beginning in July, August, or September, the four calendar quarters ended with the next preceding month of March. Wages used in the determination

of benefits payable to an individual during any benefit year may not be used in determining that individual's benefits in any subsequent benefit year.

(b) For any new claim filed on or after April 3, 2011, or earlier if the department implements the technical changes necessary to establish claims under the alternate base period, as specified in subdivision (c), if an individual cannot establish a claim under subdivision (a), then "base period" means: for benefit years beginning in October, November, or December, the four calendar quarters ended in the next preceding month of September; for benefit years beginning in January, February, or March, the four calendar quarters ended in the next preceding month of December; for benefit years beginning in April, May, or June, the four calendar quarters ended in the next preceding month of March; for benefit years beginning in July, August, or September, the four calendar quarters ended in the next preceding month of June. As provided in Section 1280, the quarter with the highest wages shall be used to determine the individual's weekly benefit amount. Wages used in the determination of benefits payable to an individual during any benefit year may not be used in determining that individual's benefits in any subsequent benefit year.

(c) The department shall implement the technical changes necessary to establish claims under the alternate base period specified in subdivision (b) as soon as possible, but no later than April 3, 2011.

SEC. 3. Section 1277.1 is added to the Unemployment Insurance Code, to read:

1277.1. (a) Notwithstanding Section 1277, if an individual has a subsequent new claim and the previous valid claim was filed under subdivision (b) of Section 1275, the new claim shall only be valid if, during the 52-week period beginning with the effective date of the previous claim, either of the following applies:

(1) The individual earned or was paid sufficient wages to meet eligibility requirements of subdivision (a) of Section 1281 and performed some work.

(2) The individual did not receive benefits under this part and was disabled and was entitled to receive wage loss benefits under Part 2 (commencing with Section 2601) or under Division 4 (commencing with Section 3200) of the Labor Code, under any workers' compensation law, under employer's liability law, or

under any disability insurance law of any other state or the federal government.

(b) For purposes of this section, “wages” includes any and all compensation for personal services performed as an employee for the purpose of meeting the eligibility requirements of subdivision (a) of Section 1281. This subdivision is not applicable to the computation of an award for disability benefits.

SEC. 4. Section 1277.5 of the Unemployment Insurance Code is amended to read:

1277.5. In determining, under Sections 1277 and 1277.1, whether a new claim is valid, twice the amount that an individual was entitled to receive under Part 2 (commencing with Section 2601) of this division or under Division 4 (commencing with Section 3200) of the Labor Code, or under any workers’ compensation law, employer’s liability law, or disability insurance law of any other state or of the federal government, during the 52-week period beginning with the effective date of the previous valid claim, shall be considered as wages earned or paid to the individual during that 52-week period for purposes of meeting the eligibility requirements of subdivision (a) of Section 1281. The amounts so included shall not be considered wages for the purpose of computing the weekly benefit amount of the individual under Section 1280 or the maximum amount payable to the individual under Section 1281.

SEC. 5. Section 1329 of the Unemployment Insurance Code is amended to read:

1329. (a) Upon the filing of a new claim for benefits, the department shall promptly make a computation on the claim that shall set forth the maximum amount of benefits potentially payable during the benefit year, and the weekly benefit amount. The department shall promptly notify the claimant of the computation. The department shall promptly notify each of the claimant’s base period employers of the computation after the payment of the first weekly benefit.

(b) The department shall promptly notify each of the claimant’s base period employers of the computation on the claim that shall set forth the number of weeks that the claimant will be eligible for benefits in the benefit year, the weekly benefit amount, and the maximum amount of benefits potentially payable during the benefit

year, based on a determination of eligibility under Article 1.5 (commencing with Section 1266).

SEC. 6. Section 1329.5 is added to the Unemployment Insurance Code, to read:

1329.5. For purposes of a claim for unemployment benefits under subdivision (b) of Section 1275, all of the following apply:

(a) Computation using the last four completed calendar quarters shall be based on available wage information processed as of the close of business on the day preceding the date of application.

(b) If the wage information is not already in the department's system, the department shall request the information from the employer, and the employer shall, within 10 days after the mailing of the request from the department, transmit to the department information on the employee's wages and any other information relevant to the request. The 10-day period may be extended for good cause.

(c) If the wage, and other relevant information, requested pursuant to subdivision (b) are not received by the department, the department shall accept an affidavit of wages and other relevant information from the claimant in accordance with authorized regulations. These regulations shall be adopted as emergency regulations.

(d) A determination of benefits made pursuant to subdivision (b) of Section 1275 shall be adjusted when the quarterly wage report from the employer is received if that information causes a change in the determination.

(e) Except in the event of fraud, if it is determined that any information provided by the claimant on an affidavit is erroneous, no penalty or refund of benefits shall be imposed on the claimant for the period prior to the calendar week in which an employer provides subsequent wage information.

SEC. 7. Section 1951 of the Unemployment Insurance Code is amended to read:

1951. The manner in which disputed claims, appeals and petitions shall be presented, the reports required thereon from the claimant and from any employing unit and the conduct of hearings and appeals shall be in accordance with rules prescribed by the appeals board. The appeals board shall require administrative law judges to consolidate for hearing cases with respect to which the alleged facts and the points of law are the same. The appeals board

shall permit a party or representative to participate in a hearing by telephone upon the party's or representative's request and showing a good cause, in accordance with regulations adopted by the board.

SEC. 8. The Employment Development Department, until April 3, 2013, shall report to the Joint Legislative Budget Committee, no less than quarterly, on the progress and effectiveness of implementation of the alternative base period program prescribed in Sections 1275, 1277.1, 1277.5, and 1329.5 of the Unemployment Insurance Code.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 10. This act addresses the fiscal emergency declared by the Governor by proclamation on December 19, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

Approved _____, 2009

Governor